



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

February 15, 2017

Tribal Leader
Narragansett Indian Tribe
PO Box 268
Charlestown, RI 02813

Re: Notification of Consultation and Coordination: Warwick/Mill Cove Sewer Project

Dear Tribal Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with the Narragansett Indian Tribe under the authority of Executive Order 13175 and EPA's Policy on Consultation and Coordination with Indian Tribes, regarding a planned project (Project) involving construction of sewer infrastructure to replace failing septic systems and cesspools in the Mill Cove community of Warwick, Rhode Island. The Project will be funded, in part, with EPA Clean Water Act State Revolving Fund (CWA-SRF) loan funding. The Project will be managed by the City of Warwick.

Both the EPA and the City of Warwick have been actively engaged in consultation under the authority and procedures of Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR Part 800 with the Narragansett Indian Tribal Historic Preservation Office (NITHPO) for nearly nine years. Following extensive consultation, the City, EPA, SHPO and NITHPO developed plans to mitigate adverse impacts to tribal cultural properties, in part, by conducting thorough archaeological investigations in all areas that require excavation and employing directional drilling methods for installing sewer mains and services to minimize the potential for adverse effects.

A draft Memorandum of Agreement (MOA) and Unanticipated Discoveries Protocol was circulated to NITHPO and other stakeholders for review in January 2016 in accordance with 36 CFR § 800.6 (Resolution of Adverse Effects). Numerous subsequent consultation meetings were held to bring about agreement to the terms in the draft agreement. As a result of these consultation meetings and at the NITHPO's request, a cultural and historical context of the Tribe's affiliation with the project area was incorporated into the MOA. However, the NITHPO has now taken the position that it will not be a signatory to the MOA if the SHPO is also a signatory and unless the agreement cites the applicability of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001-3013. NAGPRA provides protection for Native American burial sites and control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands. Tribal land is defined by NAGPRA as "all lands

within the exterior boundaries of any Indian reservation; (b) all dependent Indian communities” and (c) lands specific to Native Hawaiians. 25 U.S.C. § 3001(15). At the most recent consultation meeting between EPA and the NITHPO, which occurred in-person on the Narragansett Reservation on January 6, 2017, the NITHPO did not wish to entertain further discourse on the federal government’s position that the project does not occur on “tribal lands,” that NAGPRA would not directly apply to this project, or that the SHPO must be a signatory to the MOA. The NITHPO ended the consultation meeting after less than thirty minutes.

EPA and the City of Warwick have dutifully consulted with the NITHPO and SHPO, as required under NHPA Section 106. EPA now understands that the NITHPO’s current position is that it will not sign the MOA as currently drafted. Under 36 CFR § 800.6(c)(2), as well as the Advisory Council on Historic Preservation’s guidance document entitled “Consultation with Indian Tribes in the Section 106 Review Process: A Handbook,” the Tribe’s refusal to participate in the MOA as an “invited signatory” does not preclude the Project from moving forward or invalidate the MOA. However, before proceeding further, EPA wishes to consult with the Tribal Leader under the authority of Executive Order 13175 and in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). The EPA invites you and your designated consultation representative(s) to participate in this process.

The EPA plans to consult with the Narragansett Tribal Leader on a date that is mutually agreeable before March 3, 2017. If consultation and agreement with the Narragansett tribal Leader cannot be reached by March 3, 2017, the project will move forward as proposed.

The official EPA contact person for this consultation and coordination process is Captain Michael Stover, P.E., Region I Indian Program Manager. Captain Stover will coordinate the logistics for this consultation with the Tribe. Please do not hesitate to contact Captain Stover at (617) 918-1123 or stover.michael@epa.gov should you have any questions.

Sincerely,



Deborah A. Szaro
Acting Regional Administrator

Enclosure: Table of Consultation and Coordination Meetings since 2011
Draft Memorandum of Agreement and Unanticipated Discoveries Plan

cc: John Brown, THPO
Jack Killoy, Attorney

Table of Consultation and Coordination Meetings since 2011: Warwick/Mill Cove Sewer Project

Date	Location	Date	Location
1 Dec 2011	Warwick Sewer Authority	2 Dec 2015	Warwick Sewer Authority
13 Jan 2012	Warwick Sewer Authority	7 Dec 2015	Warwick Sewer Authority
2 Mar 2012	Warwick Sewer Authority	11 Dec 2015	Governor Francis Inn
30 Mar 2012	Warwick Sewer Authority	19 Jan 2016	Warwick Sewer Authority
27 Apr 2012	Warwick Sewer Authority	2 Feb 2016	Warwick Sewer Authority
8 Jun 2012	Warwick Sewer Authority	23 Feb 2016	Narragansett Longhouse
13 Jul 2013	Warwick Sewer Authority	2 Mar 2016	Conference Call
29 Aug 2013	Warwick Sewer Authority	22 Apr 2016	Warwick Sewer Authority
4 Sep 2013	Warwick City Hall	14 Jun 2016	Warwick Sewer Authority
8 Oct 2014	Warwick Sewer Authority	24 Jun 2016	Warwick Sewer Authority
19 Nov 2014	Warwick Sewer Authority	4 Nov 2016	Conference Call
28 Oct 2015	Warwick Sewer Authority	6 Jan 2017	Narragansett Longhouse